THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 11339 of 2004

Dated: 31.08.2005

Between:

Smt. Sambaraju Vijayalakshmi, W/o. S.Narasimha Murthy, R/o. LIG 21, Sector VI MVP Colony, Visakhapatnam.

..... PETITIONER

AND

1 The Joint Sub Registrar, Stamps and Registration, Visakhapatnam.
2 The District Registrar of Assurance cum Collector, Visakhapatnam.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 11339 of 2004

ORDER:

This writ petition has been filed assailing the order of remand passed by the learned Principal Senior Civil Judge, Visakahaptnam in C.M.A.No.1 of 1998, dated 14.07.2003.

The petitioner is an allottee of house bearing No.LIG 21 by the Visakhapatnam Urban Development Authority (for short 'VUDA'). He paid total consideration of Rs.23,000/-. When he submitted the document for registration, an objection has been raised with regard to the market value of the property. Thereafter, a reference has been made to the District Registrar of Assurance-cum-Collector, Visakhapatnam for adjudication. The District Registrar fixed the market value of the property at Rs.1,27,390/- by order dated 26.6.1997. Aggrieved by the order passed by the District Registrar of Assurance-cum-Collector, the petitioner filed C.M.A. 1 of 1998 on the file of the Principal Senior Civil Judge,

Visakahapatnam. The learned appellate authority on considering the material brought on record and on hearing the counsel for both the parties, recorded a specific finding that the appellant cannot be penalized with more stamp duty than the stamp duty which he is liable to pay on the amount of sale consideration paid by him to VUDA and thereafter proceeded to remand the matter back to the District Registrar of Assurance-cum-Collector for fresh adjudication under Section 47-A of the Indian Stamp Act. Assailing the order, the petitioner has filed the writ petition invoking the jurisdiction under Article 226 of the Constitution of India.

A counter affidavit has been filed by the 2nd respondent-District Registrar of Assurance-cum-Collector, Visakhapatnam. It is stated in the counter affidavit that the matter is pending on his file after remand, for appearance of the petitioner. I deem it proper to refer the relevant portion of Para 3 of the counter affidavit and it is thus:

> *"As to the averments in the petition the orders in WP No.14566 of 1996 and CMA 1/98 and orders thereof, I submit that the learned Principal Senior Civil Judge, Visakahaptnam in CMA 26/97, while discussing inter alia the subject of the case, finally ordered setting aside the orders of the District Registrar and directed to release the document forthwith without collecting any further stamp duty; while in the instant CMA 1/98, the Principal Senior Civil Judge, Visakahaptnam was pleased to remit back the case for fresh disposal according to Law.*
>
> *Therefore, the orders of the Principal Senior Civil Judge in CMA 26/97 are quite different from the orders passed in CMA 1/98 by the PSCJ, Visakahaptnam;*
>
> *And accordingly, I submit that the instant case has since been remitted back to this Respondent's Office, the matter is being taken up in obedience to the orders of the Court and is pending appearance of the concerned party."*

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue appearing on behalf of the respondents.

Learned counsel for the petitioner contends that the issue involved in this writ petition is squarely covered by a Judgment of a learned single Judge of this Court in W.P.No.14566 of 1995 (*V.V.Raman Rao and others vs., The Inspector General of Stamps and Registration, Hyderabad*).

One fact required to be taken note of in this is case that the order of remand came to be passed by the learned Principal Senior Civil Judge, Visakhapatnam in CMA No.1 of 1998 on 14.7.2003. No stay has been granted by this Court while issuing Rule in the writ petition. Though two years period has been elapsed, there seem to be no progress before the District Registrar of Assurance-cum Collector, Visakhapatnam. The appellate authority has specifically observed in Para 11 of the Judgment as follows:

> *"In the aforesaid case, the Government issued orders directing the A.P. Housing Board to sell a plot to the petitioner at Rs.600/- per square yard. When he felt that the said rate is excessive he challenged the same by way of writ before the Hon'ble High Court. Therein, the Hon'ble High Court fixed the rate of Rs.400/- per square yard. The A.P. Housing Board in accordance with the orders passed in the writ petition sold the site to the petitioner at Rs.400/- per square yard. The Registering authorities took an objection for Registration on the ground that the value of the property is not truly set-forth and accordingly it had fixed the value at Rs.1440/- per square yard. Then their Lordships held that Section 47-A has been incorporated to discourage under valuation of the properties but it does not apply where actual price of the properties are reflected. It is settled law that the Registration Authorities cannot insist for payment of stamp duty on the basis of market value fixed in the Basic Value Register. In this case on hand the sale consideration for the property was fixed by the VUDA. There is no scope or chance to deliberately under value the property when the rate is fixed by the Government. It is only when the true value is not set-forth, then Section 47-A applies. What is to be considered is whether the value mentioned in the sale deed is true or not? Therefore, it is quiet evident that the Registering Officer should satisfy himself above the valuation or under valuation and shall act accordingly. When the VUDA collected a particular amount as mentioned in the sale deed, it cannot be disputed at all because VUDA is Authority of the State Government. There is absolutely no whisper in the impugned Order that the real market value or the amount paid to the VUDA by the appellant has been suppressed. In such a case, the appellant cannot be penalized with more stamp duty than the stamp duty which he is liable to pay on the amount of sale consideration paid by him to VUDA. Therefore, I hold that the impugned order is not legal and cannot be sustained."*

In view of the observation made by the appellate authority, the only option left to the District Registrar is to accept the rate at which the VUDA allotted the plot

to the petitioner. Since the matter has been pending before the District Registrar for quite a long time, I deem it appropriate to direct the District Registrar of Assurance-cum-Collector, Visakhapatnam to dispose of the matter within a period of two weeks from the date of receipt of a copy of this Order. It is not out of place to mention that the 2nd respondent-District Registrar of Assurance-cum-Collector, Visakahaptnam has to take note of the proviso to Section 47-A (6) of the Act while disposing of the appeal.

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31.08.2005

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